IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Crl.MC.No. 754 of 2007()

AGAINST THE ORDER DATED 20/02/2007 IN CRMP.1591/2007 IN CC.66/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHALAKUDY

.....

PETITIONER: PETITIONERS/ACCUSED IN.C.C.

---

1. A.A.ASHRAF, CHAIRMAN, IMAM RAZI MUSLIM EDUCATIONAL CHARITABLE TRUST MALA, VADAMA VILLAGE.

2. MOHAMMED AMEER, PURCHASE DIRECTOR, KAMALIYA MEDICAL INSTITUTION, MALA.

BY ADV. SMT.LATHA PRABHAKARAN

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE

---

1. R.NARAYANASWAMY, S/O.SREEPURAM N.RAMASWAMY, MARKET ROAD, PERUMBAVOOR VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM, PROPRIETOR OF M/S.TRINITY SYSTEMS, TRICHUR, REP. BY HIS POWER OF ATTORNEY HOLDER SRI.SREEPURAM N.RAMASWAMY PERUMBAVOOR VILLAGE.

2. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/03/2007 ALONG WITH CRL.M.C.NO.754 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.754 and 755 of 2007

Dated this the 20th day of March, 2007

ORDER

The petitioners are accused in two separate prosecutions, both initiated by the same respondent/complainant. The cases were filed as early as in 2004. Trial has already commenced. The matter is at the stage of defence evidence. The petitioners, at the stage of 313 examination, stated that they have no defence evidence to adduce. The learned Magistrate thereupon posted the cases for hearing. It is at that stage they filed applications to re-open the defence evidence and to permit the 1st petitioner to examine himself as a defence witness. The first application is filed under Section 311 Cr.P.C to re-open the evidence. The second application is filed under Section 315 Cr.P.C to examine the 1st petitioner as an accused. The learned Magistrate rejected the said prayer on the ground that the petitioners had, when they were examined under Section 313 Cr.P.C, reported that they had no further defence evidence. It is, in these circumstances, that the petitioners have come to this Court to assail the impugned order whereunder they were denied opportunity to adduce defence evidence. In the facts and circumstances of the case, I am satisfied, that in the interests of expedition, it is not necessary to wait for issue and return of notice to the respondent/complainant. The petitioners can be granted an opportunity to examine the 1st petitioner herein as a witness subject to procedural safeguards. The

petitioners offer to examine the 1st petitioner, which is the only further evidence they want to adduce, along with the documents they want to produce, on the next date of posting.

2. The matter has not been disposed of yet, it is submitted. In these circumstances, I am satisfied that in the interests of justice, a direction can be issued that if the matter has not already been disposed of, the learned Magistrate shall give the petitioners a further opportunity to examine the 1st petitioner as a witness and prove the relevant and admissible documents produced by them on the next date of posting. The petitioners shall be ready with the first petitioner witness to be examined on the next date of posting,. The learned Magistrate shall examine the 1st petitioner on the next date of posting and shall expeditiously complete the proceedings. If the complainant wants time to cross examine the 1st petitioner, the learned Magistrate may grant such opportunity, but the first petitioner has to get ready for evidence on the next date of posting.

3. These Crl.M.Cs are, in these circumstances, allowed to the above extent.

4. Hand over a copy of this common order to the learned counsel for the petitioners for production before the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-